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**Advisory Task Force on Remote Access to and Privacy of Electronic Court Records**

**<http://www.in.gov/judiciary/admin/3389.htm>**

*Inaugural Meeting*

*Indiana Government Center South, Conference Room A*

*402 West Washington Street*

*Indianapolis, IN*

*February 26, 2016*

*12:00 – 2:00 PM*

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**MINUTES**

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**The meeting began at 12:00 p.m. as scheduled.**

**I. Welcome and Introductions**

Chief Justice Loretta H. Rush, Task Force Chair, gave opening remarks and noted 100% attendance at the meeting. Task Force members briefly introduced themselves.

**II. Charge to the Task Force**

The Chief Justice reiterated the language of the February 3, 2016 Supreme Court Order creating the Task Force: To consider public access to electronic court records in light of the purposes articulated in Ind. Admin. Rule 9(A)(2), and to provide an initial written report with findings and recommendations no later than September 1, 2016.

**III. Overview**

*A. Judge Paul D. Mathias*

Judge Paul D. Mathias, Ex-Officio Member of the Task Force, provided background information on the “practical obscurity” of paper public records giving way to potential over-exposure of online public information. Court cases often reflect vulnerable or embarrassing times in litigants’ lives, not of their own choosing. But in the digital age, court records can not be recalled – publication is forever. Hoosier values therefore need to be reflected in the Task Force’s recommendations on its “macro questions” of (1) what to share and why, and (2) whom to share it with and why.

*B. Indiana status quo*

*1. Rules and policies governing posting of court records – Lilia Judson*

Lilia Judson, Interim Chief Administrative Officer of the Division of State Court Administration, highlighted Trial Rule 77 (requiring courts to maintain a separate daily record of actions and permitting clerks to seek Supreme Court approval for remote access to the CCS, RJO, index, and case file) and Administrative Rule 9 (requiring non-confidential records to be available in the courthouse, and “endeavoring” to make other materials similarly available). But documents filed before the 2005 “green paper” rule may contain confidential

information, so preserving sealed/expunged/etc. status where appropriate, will be a challenge. No model rules address these issues, and other states' practices vary widely.

2. *Court records currently online, current case-management systems and information sharing, and access for Indiana e-filing users – Mary DePrez*

Mary DePrez, Director and Counsel for Trial Court Technology, explained what Indiana court records are currently available to the public online. Appellate court opinions and orders are currently available through Odyssey; trial courts using Odyssey or Courtview case management system (CMS) software have free online public access to the CCS; and counties using JTS CMS software have public online access through DoxPop.

The e-filing pilot project is also underway in appellate courts and a growing number of counties. The pilot courts report positive interactions with pro se litigants, who can file through public terminals, by following online instructions (including referrals to free e-mail providers), or even by handwriting pleadings for the clerk to scan and file in person.

Branches of Indiana government currently share information through INcite applications, but moving to a unified statewide CMS will be beneficial for further sharing.

#### IV. Discussion

##### A. *Posting appellate briefs*

Chief Justice Rush proposed that the Task Force consider whether appellate briefs should be posted online. Lengthy discussion ensued, focusing primarily on how (or whether) to guard against improper disclosure of confidential information. The Task Force concluded that privacy risks were substantially greater with appendices than merits briefs, and greater in pro se filings than those filed by attorneys; that pre-screening was not viable; and that briefs should be posted only if filed with the knowledge that they would be available online.

Ultimately, the Chief Justice called the question on a motion that

all “**briefs**” (as contemplated by Appellate Rule 43(A), *i.e.*, appellant, appellee, and amicus; petitions for rehearing, Tax Court review, and transfer; and any replies thereto) filed:

- (1) by **attorneys**,
- (2) in **non-confidential** case types, and
- (3) **after Friday, April 1, 2016**,

be posted for public access through Odyssey immediately upon filing.

The amended motion **carried by unanimous voice vote**, and will be considered at the Supreme Court's March 2 conference.

##### B. *Future issues for task force*

The Chief Justice noted that the next Task Force meeting will address online posting of appellate motions/pleadings and trial-court orders/judgments.

## **V. Next Meeting Dates**

The next Task Force meeting was scheduled for **April 8, 2016 from 12:00 p.m. to 2:00 p.m.**, location to be announced. It was also determined that all materials from this meeting would be posted on the Task Force website.

## **VI. Adjournment**

The meeting adjourned at 2:17 pm.

Respectfully submitted,

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